

Application No. 102.0003-04000
Amendment dated November 17, 2006
Reply to Office Action of May 17, 2006

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REMARKS

Applicant cancelled claims 177 and 257 without prejudice or disclaimer of their subject matter, amended claims 172, 176, 219, 248, 332, and 338, to further define Applicant's invention.

In the Office Action, the Examiner has indicated that claims 207-226, 237, 238 and 289-330 are allowed, and has objected to claims 190-195, 270-275 as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The Examiner rejected claims 172-175, 177, 219, and 257 under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement; and rejected claims 172-175, 177, 219, and 257 under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Applicant has cancelled claims 177 and 257 and amended claims 172, 219, and 338 to overcome the Examiner's 35 U.S.C. 112, first and second paragraph rejections. Independent claim 172 now recites "said distal end of said guard having a concave curvature in a plane parallel to the mid-longitudinal axis of said guard to approximate the contour of the face of the adjacent vertebral bodies." Dependent claims 219 and 338 now recite similar language. Applicant submits that support for the recited language is at least in Applicant's specification at page 49, line 34 through page 50, line 1 and Figs. 7D and 7F.

The Examiner rejected claims 172-178, 181-184, 247 and 331 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,015,255 to Kuslich ("Kuslich") in view of U.S. Patent No. 5,049,150 to Cozad ("Cozad"); rejected claims 172-184, 201, 202, 247-269, 276, 278-288 and 331-343 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 3,848,601 to Ma ("Ma"), further in view of known art; and rejected claims 172-184, 201, 202, 247-269, 276, 278-288 and 331-343 under 35 U.S.C. § 103(a) as being unpatentable over Codman (Signature Series 4) in view of Cozad.

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Applicant has amended impendent claims 172 and 248 to recite "said distal end of said guard having a concave curvature in a plane parallel to the mid-longitudinal axis of said guard to approximate the contour of the face of the adjacent vertebral bodies." Applicant has amended claim 332 to recite "said guard having an opening through said wall." Applicant submits that none of Kuslich, Cozad, Ma, and Codman, whether alone or in any proper combination, teach or suggest an apparatus as now claimed by Applicant.

Applicant submits that independent claims 172, 207, 248, 289, and 332 are patentable and that dependent claims 173-175, 178-206, 208-247, 249-256, 258-276, 278-288, 290-331, and 333-343 dependent from independent claims 172, 207, 248, 289 or 332, or claims dependent therefrom, are patentable at least due to their dependency from an allowable independent claim.

In view of the foregoing remarks, it is respectfully submitted that the claims, as amended, are patentable. Therefore, it is requested that the Examiner reconsider the outstanding rejections in view of the preceding comments. Issuance of a timely Notice of Allowance of the claims is earnestly solicited.

To the extent any extension of time under 37 C.F.R. § 1.136 is required to obtain entry of this reply, such extension is hereby respectfully requested. If there are any fees due under 37 C.F.R. §§ 1.16 or 1.17 which are not enclosed herewith, including any fees required for an extension of time under 37 C.F.R. § 1.136, please charge such fees to our Deposit Account No. 50-3726.

Respectfully submitted,
MARTIN & FERRARO, LLP

Dated: November 17, 2006

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